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# Welcome

## Department of Defense Contractor Personnel Office (DOC PER) 2015 COR Training

**Russ Tillett, Senior Analyst - Germany**

**russell.e.tillett.civ@mail.mil**

**<http://www.eur.army.mil/g1/content/CPD/docper.html>**

**DSN Tel: 537-1577    COM Tel: 0611-143-537-1577**

**USAREUR, G1, CPD  
ATTN: AEPE-CD  
UNIT 29351 BOX 99  
APO AE 09014-9351**

**USAREUR, G1, CPDHQ USAREUR  
ATTN: G1-CPD ODCS DOC PER (AEPE-  
CD)  
UNIT 29351 BOX 99  
LUCIUS D. CLAY KASERNE  
65205 WIESBADEN-ERBENHEIM  
OFFICIAL BUSINESS**



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# Today's Schedule

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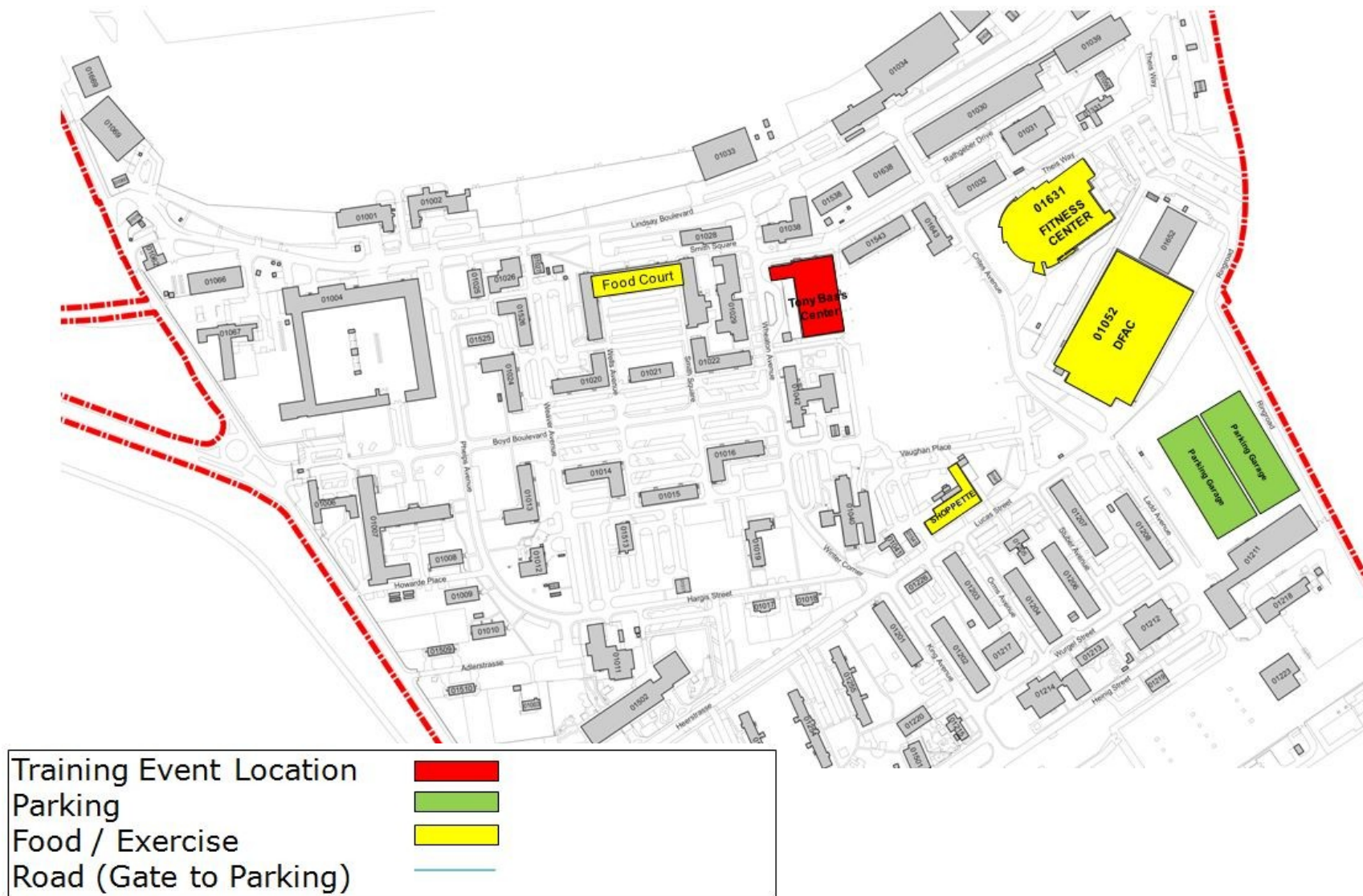
- 0730-0815** Arrival/registration
  - 0815-0830** Welcome and administrative information
  - 0830-0930** Recent changes/Challenges
  - 0930-1000** Italy status accreditation overview
  - 1000-1015** Break
  - 1015-1130** Germany status accreditation overview
  - 1130-1200** Q&A (Q&A also occurs throughout briefings)
  - 1200-1300** Lunch break
  - 1300-1330** Article 72 Primer
  - 1330-1430** DCOPS Training
  - 1430-1445** Break
  - 1445-1515** DCOPS Training (continued)
  - 1515-1545** TASS Training
  - 1545-1645** Recent changes/Challenges (REPEAT of 0830-0930 session)
  - 1645-1700** Break
  - 1700-1815** Germany status accreditation overview (REPEAT of 0830-0930 session)
  - 1815-1900** Q&A for CONUS participants
  - ~~**1330-1700** Appointments with DOCPER teams concurrently with~~
- ~~afternoon events!~~

# Administrative Items

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- Coffee and snacks
- Restrooms
- Where to get some lunch (NEXT SLIDE)
- Setting up one-on-one meetings with DOCPER teams
- Asking questions
- Availability of the training slides after the event
- Please be certain that you have registered
- Providing feedback – Next year I wish you would...

# Lunch



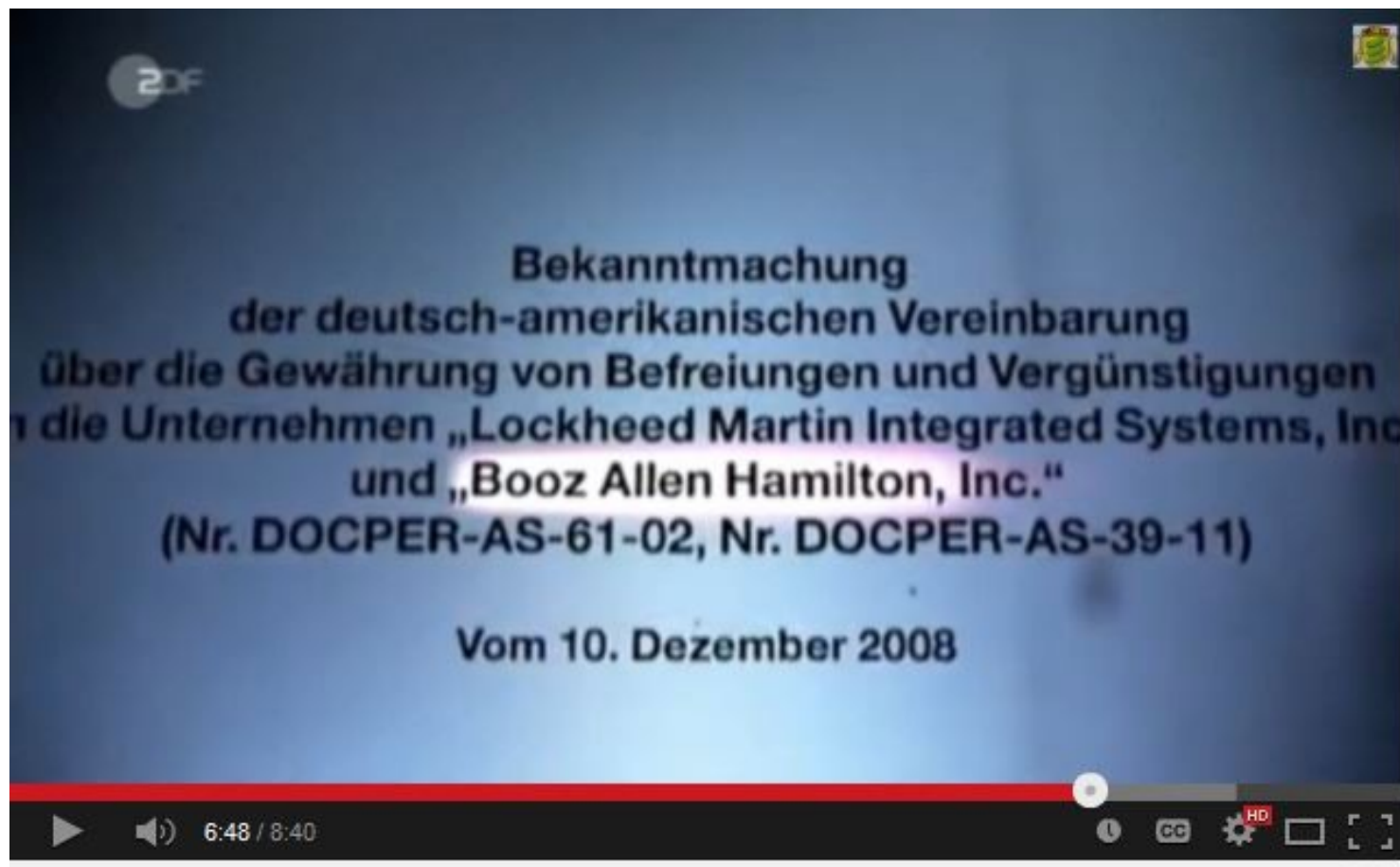


# Topics of High Interest

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- Article 72 Challenges
- Applicant Reviews
- “Yellow-card” Decisions
  - “Time-alone” determinations
  - Tax Implications
- Same-Sex Marriage
- Fax-back Update
- Contractor CAC Issues
- SPOT LOAs
- Questions?

# German TV on NSA Spying Allegations



Ist die Spionage der NSA offiziell erlaubt? Frontal 21 ZDF 30. 07. 2013

[Is the NSA spying officially allowed? Frontal ZDF 21, 30 July 2013]



# Article 72 Issues--1

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- DEVELOPING ISSUES:
  - Fall 2013: In response to NSA spying allegations, Ministry of Foreign Affairs (MFA) mostly stops approving Article 72 contracts (Troop Care (TC), Analytical Support (AS, includes mil planners, intel analysts, etc.)) approved via diplomatic notes
  - Only 33 mostly TC contracts approved (Jan, Apr, Jun 2014)
  - Progress slows further in Jun 2014 when high-level DC interagency group (DC) gets involved
- DC CONCERNS/OUTCOMES:
  - DC wants no characterization of contracts as intel vs. non-intel (USG neither “confirms nor denies”)
  - DC wants no reference to Article II, NATO SOFA
  - DC doesn’t like certain phrasing - “respect German law” and certain “safeguard language” strongly desired by MFA
  - 15 Sep: DC-cleared position presented to MFA



# Article 72 Issues--2

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- The “Unilateral Status” problem: DOCPER has extended status of “incumbents” on contracts awaiting diplomatic note approval at the MFA
  - Mission continuity/avoid mission failure
  - Avoid undue hardship on affected contractor employees
- MFA initially disagrees
  - Under MFA interpretation of Framework Arrangement, no contractor employees (including incumbents) are approvable while any contract action (new, modification, extension) is pending at the MFA
  - MFA (Feb 14) also warned against bringing in Article 72 workers “disguised” as Technical Experts under Article 73
  - At least one Land objected to use of “faxback” to support Article 72 contracts
- MFA later agrees in principle to “one-time” retroactive approval of incumbents upon signing notes
- Unilateral status for incumbents may be codified in future diplomatic notes



# Article 72 Issues--3

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- Consequences of the “Unilateral Status” problem
  - Some contractors face a “status gap”
    - Contractors who were previously bilaterally approved, then had their status unilaterally extended, but then were subsequently bilaterally approved again are said to have a “status gap”
    - The risk to these individuals is very low
    - However a “retroactivity” note is still needed to ensure full coverage
  - Some contractors still have only unilateral status
    - Contractors who were previously bilaterally approved and for whom a status extension was granted, but who work under a contract or task order still awaiting enterprise approval
    - The risk to these individuals is higher than for those with only a “status gap”
    - A “retroactivity” note will still be needed to ensure full coverage

- ~~Worst case scenario would be notifications asking~~  
individuals to leave Germany and pay back taxes

# Future for Article 72 Contracts--4

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- Moving Forward:
  - “Status Extension”: MFA has agreed to providing a means to eliminates “status gaps” for incumbent on contracts awaiting diplomatic note approval
    - Would explicitly allow DOCPER to grant continuing status to incumbents (i.e., what DOCPER now does)
    - What is an “incumbent”?
      - Same person
      - Working at the same location
      - Providing the same services
      - Supporting the same organization
      - Must be previously and currently bilaterally approved
  - Expect close scrutiny: Synopses of PWS/SOW must allude to all critical elements in PWS (especially **intelligence** contracts)
    - Synopsis >> full disclosure of what’s in the PWS/SOW
    - 4 German entities reviewing: MFA, MOD, MOI, intel staff in German chancellery

# **Leaning Left and Leaning Right**

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- **In the past, DOCPER tended to lean towards 72 anytime it was hard to determine 72 vs 73**
- **Current definitions :**
  - **Article 73: “Technical Experts” (TE) >> contractors who work with things, became experts while working with things or who train others how to work with things**
  - **Article 72: “Analytical Services” (AS) >> contractors who work with ideas or who train others how to work with ideas**
- **Example: Is a trainer teaching Counter IED techniques AS or TE?**
  - **BEFORE: DOCPER previously leaned toward AS (“trainer” is a defined position in Article 72 Framework Agreement)**
  - **NOW: If the “trainer” is teaching about “things”,**

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**he’s a TE**



# Applications vs. 6yr Re-Applications

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- Apps required when a contractor employee:
  - First applies for a position in Germany
  - Changes contract, or job/position under same contract
- 6yr Re-Applications only when:
  - When a contractor's most recent application was more than 6 years ago
    - ...because a contractor's circumstances may change significantly in 6 years
    - DOCPER only submits a revised 715-9C
    - Will not result in a denial, but may result in a change to "yellow-card" status



# “Yellow-card” Approval Update

- A “yellow-card” approval:
  - The Laender’s “kinder, gentler” way of saying an applicant appears to be ordinarily resident, but without denying the applicant
  - It’s an approval, not a denial
  - “Yellow card” reflects the Land’s opinion, and is not “appealable”
- Can applicant re-apply after “yellow-card”?
  - Yes, but DOCPER will **disapprove** the application except in the following circumstances:
    - Applicant is re-applying for status because contract changes force re-application within **1 year** of initial “yellow card” approval
    - Applicant leaves Germany (with family and HHG) for **2 years** (essentially, same as Laender OR rules)
    - Applicant provides – with the application -- documentation that provides a basis for DOCPER to argue to Land that applicant should **not** be considered “ordinarily resident”

# **"Time alone" Yellow-card Decisions**

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- Laender authorities have based some "yellow-card" decisions on the basis of time in Germany
  - When Laender began using "time alone" criterion, DOCPER asked them to apply a "bright line" rule for consistency
  - The Laender response: 20 years
- Laender practice was inconsistent
  - Some Laender used 20 consecutive years, others used 20 cumulative years
  - DOCPER (Aug 2014) argued for 20 consecutive years
  - Laender agreed
- DOCPER recommended that past "time alone" decisions based on less than 20 consecutive years be eligible for re-submission
  - Laender agreed (Nov 2014)
  - DOCPER has no experience to date with re-submissions



# **“Yellow-card” and Tax Implications--1**

- Laender have issued “yellow cards” since 2008-2009
- Taxation: A “yellow card” decision generally means that Land authorities for status accreditation will provide information to Land tax authorities
  - A contractor employee issued a “yellow card” should assume they are “on the radar” of the Land tax authorities
- Taxation of a contractor employee would be on the basis of non-compliance with Article X, NATO SOFA
  - Article X requires that the person be here “by reason solely” of his being a member of the force or civilian component
  - Land tax authorities (and German Finance Courts) look to the individual’s “intent to return” (to the US) to make the “solely” determination
  - NOTE: “intent to return” is different from the “main focus of vital interests” standard used for making NATO SOFA status accreditation decisions
- **BOTTOM LINE: A “yellow card” threatens both status accreditation AND exemption from German taxes**





# “Yellow-card” and Tax Implications--2

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- Some criteria German courts have considered in determining “intent to return”:
  - Overall duration of stay in Germany
  - Owning real estate in USA vs. real estate in Germany
  - (valid) US (state) driver’s license
  - Driving a car with US specifications
  - U.S. State income tax return filed with Federal 1040
  - Frequently traveling back to the USA
  - Participation in U.S. elections (continuing ties to the USA)
  - German spouse (and the amount of German spouse’s income)
  - Kindergeld, kids in German school; homeowner grants
- Things NOT to do:
  - Do NOT mark Bona Fide Resident on the IRS Form 2555 (Foreign Earned Income)
  - Do NOT accept German social benefits, especially if tied to residence
  - Do NOT file a German joint tax return (Klasse III)

# Same Sex Marriage

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- **U.S. Supreme Court strikes down parts of the Defense of Marriage Act (DOMA) as unconstitutional (Jun 2013)**
  - DoD (Sep 2013) allows spousal and family benefits, including ID cards, for same-sex spouses
  - Same-sex spouses must have a marriage certificate from a U.S. state that authorizes same-sex marriages
    - In late 2103, there were 14 states that authorized. As of Jan 2015, there were only 14 states that did **NOT** authorize same-sex marriages
      - Alabama , Arkansas, Georgia, Kentucky, Louisiana, Michigan, Mississippi, Missouri, North Dakota, Ohio, South Dakota, Tennessee, Texas, Nebraska
    - Marriage certificates from countries that authorize same-sex marriage can be basis for spousal benefits.
- **Can SOFA status be granted to same-sex spouses in Germany and Italy?**
  - Germany: **NO**. A "certified civil partnership" is not a "marriage" within the German legal system
  - Italy: **Yes**. Allowed, although same-sex marriage not legal

# “Fax-back” Basics

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- “Fax-back”
  - Short-hand term for "Request for Confirmation of Exemption from the Requirement to Obtain a Work Permit" in Germany
    - Contractor employee can work in TDY status not to exceed 3 months in a 12-month period
    - Allows contractors independent base access
  - Does NOT authorize logistical support (e.g., PX, commissary, fuel rations)
- Process:
  - Initiated by contractor (the company), scanned and emailed to the Bundesagentur für Arbeit (BA) Zentrale Auslands-und Fachvermittlung (ZAV) in Stuttgart
  - The BA signs and stamps the form with the German eagle, and emails it back to the originator
  - Contractor employee retains the signed form



# “Fax-back” Changes

- Count on up to **10 days** for the BA to process
  - But BA will likely do more quickly
- Fill out the form for the **minimum time** needed
  - Easier for the BA to approve a new “Fax-back” then try to amend a previous one
  - If more time is needed, fill out subsequent forms as necessary
  - For a subsequent “Fax-back”, reference the predecessor “Fax-back” and explain the reason for the update/changes
  - If a correction of an approved “Fax-back” is required, the new request needs to contain a copy of the passport pages reflecting the duration of stay in Germany
- New email address:  
[Stuttgart.009-OS@arbeitsagentur.de](mailto:Stuttgart.009-OS@arbeitsagentur.de)
- New form: DOCPER web-page (Google “DOCPER”), or at:
  - [http://www.eur.army.mil/g1/content/CPD/docper/docper\\_germanyLinks.html?tab=5&framepage=germanfaxback.html#top](http://www.eur.army.mil/g1/content/CPD/docper/docper_germanyLinks.html?tab=5&framepage=germanfaxback.html#top)

# Contractor CAC Issues

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- Contractor employees **MUST** get the CAC authorized under the DOCPER-issued DD 1172-2
  - Some do not want to get the DOCPER-authorized CAC
  - May already have “better” CACs (e.g., GC CAC, or PRIV CAC valid for a period longer than the DOCPER-authorized CAC)
- Result of not getting the DOCPER-authorized CAC:
  - CAC expiration dates inconsistent with the DCOPS database
  - Contractor employee may think he has NATO SOFA status, but does not, or vice versa
- Contractor employees who do not get the DOCPER-approved CAC cannot expect that we will cover for them

# SPOT LOAs--1

LETTER OF AUTHORIZATION			DATE OF REQUEST
REQUIRING ACTIVITY DoS Dept Department of State Information Resource Management			GOVT AGENCY POC GPOCLname, GPOCFname
NAME (Last, First, Middle Initial) BKNIPR-Lname-two-A, BKNIPR-Fname-two-A			SSN/FIN xxx-xx-1372
HOME ADDRESS 123 Park Dr Chantilly Virginia 20151			CITIZENSHIP United States
EMAIL BKNIPR-Lname-two-A@spot-testing.com			THEATER EMAIL itas@email.com
CLEARANCE LEVEL w/ AGENCY Confidential - CCS	CLEARANCE DATE (MM/DD/YYYY) 12/12/2020	JOB TITLE Electro-Mechanical Technicians	SUPERVISOR/NON-SUPERVISOR Non-Supervisor/Non-Manager
COMPANY (full name) American Systems Corp. (ASC)	COMPANY POC CPOCLname, CPOCFname	COMPANY POC TELEPHONE 703-234-5678	COMPANY POC EMAIL PocEmail@pocemail.com
CONTRACT NUMBER/ TASK ORDER BKNIPR-MyTestContractTO-DOS-1/BKNIPR-M	CONTRACT / TO START DATE 8/21/2012	CONTRACT / TO END DATE 9/20/2013	CONTRACT ISSUING AGENCY Dept. of State
NEXT OF KIN (NOK) NAME Available in SPOT	NOK RELATIONSHIP Available in SPOT	ASSIGNED KO GovKO A RFT	ASSIGNED KO TELEPHONE 1234
IN-THEATER CONTACT TheaterPOCLname, TheaterPOCFname	CONTACT'S PHONE 703-234-5678	CONTACT'S EMAIL IntheaterPOC@theater.com	
COUNTRIES TO BE VISITED France		<b>GOVERNMENT FURNISHED SERVICES</b> <input checked="" type="checkbox"/> APO/FPO/MPO/Postal Services <input checked="" type="checkbox"/> Billeting <input checked="" type="checkbox"/> CAC <input type="checkbox"/> Dependents Authorized <input type="checkbox"/> DPO <input checked="" type="checkbox"/> Fuel Authorized <input type="checkbox"/> Local Access Badge <input checked="" type="checkbox"/> Mil Clothing <input type="checkbox"/> Mil Issued Equip <input type="checkbox"/> MWR <input type="checkbox"/> Primary Care <input type="checkbox"/> Authorized Weapon <input type="checkbox"/> CAAF <input type="checkbox"/> Commissary <input checked="" type="checkbox"/> DFACs <input checked="" type="checkbox"/> Excess Baggage <input checked="" type="checkbox"/> Govt Furnished Meals <input checked="" type="checkbox"/> Mil Banking <input checked="" type="checkbox"/> Mil Exchange <input type="checkbox"/> Milair <input type="checkbox"/> None <input type="checkbox"/> Transportation	
PURPOSE utomated Smoketest ran on 09/20/2012.			
COMPANY BILLING ADDRESS 123 Main St, Philadelphia, Pennsylvania - 19046 United States	DBA INSURANCE INFORMATION Company Name: DBA Insurance Company Policy Number: PolicyNumber01234 POC Phone Number: (703)-123-4567		

## SPOT = Synchronized Pre-deployment Operational Tracker

Our concern with SPOT orders has to do with the linkage between the "Countries to be Visited" and the "Government Furnished Services" that have been "authorized" .....

The government organization specified above, in its mission support capacity under the contract, authorizes the individual employee identified herein to proceed to the location(s) listed for the designated deployment period

# SPOT LOAs --2

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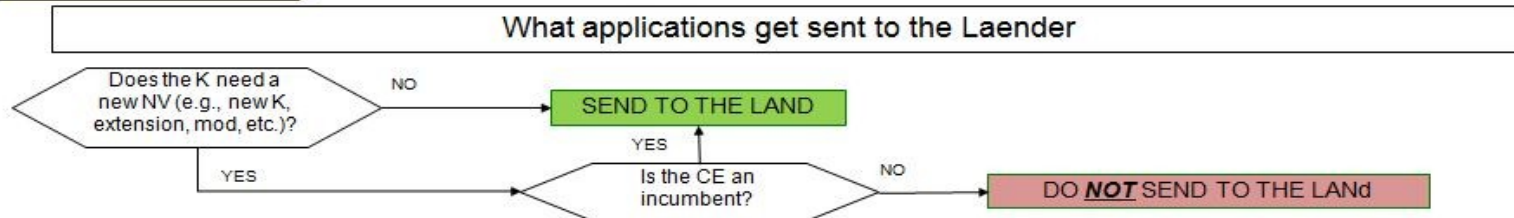
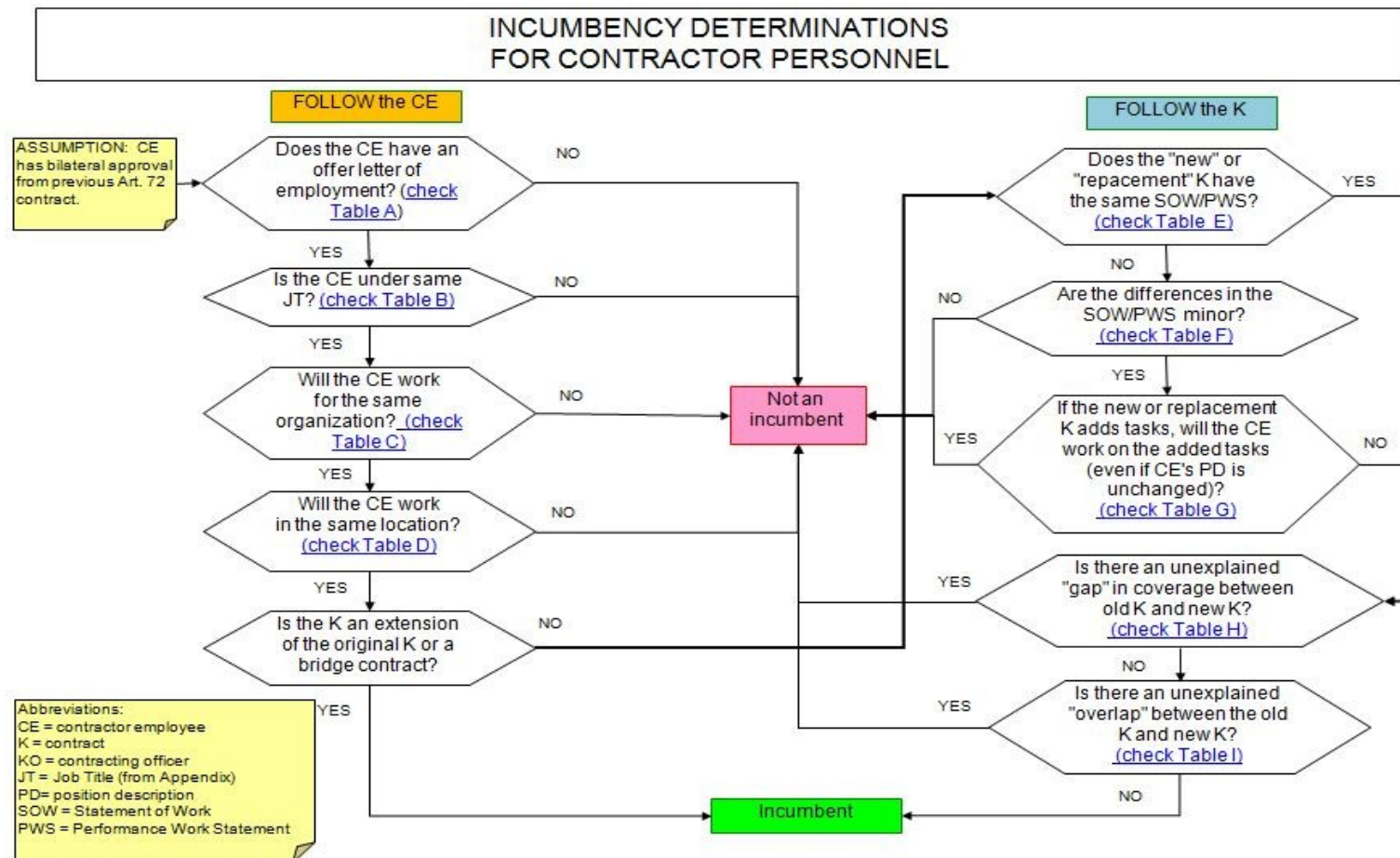
- SPOT Letter of Authorization (LOA) CANNOT be used to grant privileges, Individual Logistics Support or Government Furnished Services (ILS/GFS) in Germany or Italy
- ID Card facilities are instructed that:
  - ILS/GFS in Germany or Italy available only to contractor employees granted NATO SOFA status
  - ILS/GFS controlled by international agreement in both countries
  - Unauthorized use of such privileges, which are associated with NATO SOFA status, constitutes a customs violation
- SPOT LOAs work for downrange. They **do not work** in Germany nor Italy



# Questions?

# BACK-UP SLIDES

# Article 72 Issues-Incumbency--1



# Article 72 Issues-Incumbency-2

## SUPPORTING TABLES

**Table A**

Offer letter of employment should **NOT** reflect:

- Different PD
- Different location
- Different org

**Table B**

Same JT:

- "Same JT" means the JT in Appendix
- What if same JT but different PD?
- (a) Example: JT is "intel analyst" but PD switches from "HUMINT analyst" to "Signals Analyst"?
- (b) Generally, NO. Although same JT, PDs too far apart.
- (c) If contractor understands loss of incumbent at stake, may revert to old PD.

**Table C**

Different organization:

- (1) AFRICOM to EUCOM?
- (2) NO, even if same PWS/SOW

Same organization, different directorate:

- (1) Switch from AFRICOM J2 to AFRICOM J3?
- (a) Ask why. Document the response. (e.g., COCOM decision to fit these tasks under J3 vice J2 (we won't 2nd guess that)).
- (b) Also, if PWS/SOW the same, no problem.

**Table D**

Same location:

1. Stuttgart = Stuttgart, Stuttgart<->Ramstein
2. Is Stuttgart Kelly Bks = Stuttgart Patch Bks? AFRICOM on Kelly, EUCOM on Patch. ASK why.
3. Moves between bldgs. on same Kaserne -- no problem

**Table E**

Does the "new" or "replacement" K have the same SOW/PWS?

- "Yes/no" question.
- A replacement K could be running "in parallel" (see Table I) because the organization found a cheaper/better contract to fulfill the mission.
- Check the PWS/SOW.

**Table F**

If changes in PWS/SOW, are they minor?

General rule: the main body of the PWS/SOW remains the same.

1. **MINOR.** Re-framing of the PWS/SOW to update the tools used (e.g., a new terrorist database replaces the old one).
2. **MINOR.** Adding a task (or tasks), other tasks remain the same. But a CE on the previous PWS/SOW is NOT an incumbent if he's on a new task.
3. **MINOR.** Deleting a task (or tasks). Incumbents on deleted tasks are NOT incumbents to be placed on existing tasks or new tasks.

**Table G**

If the new or replacement K adds tasks, is the CE to work on the added tasks (even if CE's PD is unchanged)?

See Table F

**Table H**

Is there an unexplained "gap" in coverage between old K and new K?

"Gap" refers to time.

- A "gap" in coverage means that, at least for some time, the CEs are/were without a K. Generally, no K, no status.
- To "cover" CEs for a small gap, the COR needs to provide a an explanatory email from the KO.
- A "gap" more than 3 days is troubling, even if the company is "working" without a K (at risk of not being paid).

**Table I**

Is there an unexplained "overlap" between the old K and new K?

"Overlap" refers to time.

- An overlap for a "phase-in period" (new vendor) is no problem.
- Otherwise, need to ask the COR to explain the overlap and check the PWS/SOW to ensure it's the same for both contracts.